

BRB No. 04-0559 BLA

JOHN W. FORD)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DIRECTOR, OFFICE OF WORKERS')	DATE ISSUED: 02/28/2005
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order – Denying Benefits of Rudolf L. Jansen,
Administrative Law Judge, United States Department of Labor.

Sam H. Whitehead, Lexington, Kentucky, for claimant.

Rita Roppolo (Howard M. Radzely, Solicitor of Labor, Donald S. Shire,
Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor;
Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice),
Washington, D.C., for the Director, Office of Workers' Compensation
Programs, United States Department of Labor.

Before: DOLDER, Chief Administrative Law Judge, SMITH and HALL,
Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order – Denying Benefits (03-BLA-6327) of
Administrative Law Judge Rudolf L. Jansen (the administrative law judge) on a subsequent
claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety
Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). The administrative law judge
found that the newly submitted evidence of record failed to establish total respiratory
disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv), the element of entitlement previously
adjudicated against claimant, and thereby, failed to establish a change in a condition of
entitlement pursuant to 20 C.F.R. §725.309(d). Accordingly, the administrative law judge
denied the subsequent claim.

Claimant filed his first claim for benefits with the Department of Labor (DOL) on August 27, 1998. Director's Exhibit 16. Following a hearing, Administrative Law Judge Robert L. Hillyard found that the evidence established the existence of pneumoconiosis pursuant to Section 718.202(a)(4), but found that the evidence failed to establish a total respiratory disability. Hillyard Decision and Order dated September 9, 2000. Claimant took no further action and the denial became final.

Subsequently, claimant filed the instant claim with DOL on October 19, 2001. Director's Exhibit 1. Following a hearing, the administrative law judge issued a Decision and Order denying benefits dated March 17, 2004. Addressing whether a change in a condition of entitlement was established, the administrative law judge found that the newly submitted evidence failed to establish total respiratory disability pursuant to Section 718.204(b)(2)(i)-(iv), the element previously adjudicated against claimant, and concluded, therefore, that the newly submitted evidence did not establish a change in a condition of entitlement. Benefits were, accordingly, denied.

On appeal, claimant argues that the medical opinion evidence establishes the existence of pneumoconiosis and that the pneumoconiosis is totally disabling. Claimant's Brief at 2. The Director, Office of Workers' Compensation Programs (the Director), responds, contending that any error made by the administrative law judge in consideration of the evidence is harmless and urging affirmance of the administrative law judge's denial of benefits.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant contends that the medical opinion evidence establishes the existence of pneumoconiosis and that pneumoconiosis is totally disabling. Specifically, claimant contends that "pneumoconiosis is a disease that can cause or increase the chances of a heart attach (sic) or other problems related to lack of oxygen in the blood stream [and Claimant] did suffer a myocardial infarction in 1983 when working as a miner and [as] a result...could no longer work in heavy labor." Claimant's Brief at 2. The administrative law judge acknowledged that the record suggested that claimant was totally disabled due to non-respiratory conditions, *e.g.*, his heart condition. *See* Decision and Order at 4, 10.

Claimant, who is represented by counsel, has not, however, challenged, with any specificity, the administrative law judge's finding that the newly submitted evidence fails to

establish a total respiratory disability, which he is required to do. *See* 20 C.F.R. §§718.204(b)(2); 725.309(d); 802.211(b); *Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Slinker v. Peabody Coal Co.*, 6 BLR 1-465 (1983); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983); *see Beatty v. Danri Corp.*, 49 F.3d 993, 19 BLR 2-136 (3d Cir. 1995), *aff'd* 16 BLR 1-11 (1991); *Jewell Smokeless Coal Corp. v. Street*, 42 F.3d 241, 19 BLR 2-1 (4th Cir. 1994); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*). Thus, because claimant has failed to challenge the administrative law judge's finding that claimant failed to establish a total respiratory disability with sufficient specificity, we must affirm the administrative law judge's finding that claimant failed to establish a total respiratory disability and consequently failed to establish a change in a condition of entitlement. 20 C.F.R. §§718.204(b)(2); 725.309(d); 802.211(b); *Cox*, 791 F.2d 445, 9 BLR 2-46; *Sarf*, 10 BLR 1-119; *Slinker*, 6 BLR 1-465; *Fish*, 6 BLR 1-107; *see Beatty*, 49 F.3d 993, 19 BLR 2-136; *Street*, 42 F.3d 241, 19 BLR 2-1; *Gee*, 9 BLR 1-4.

Accordingly, the administrative law judge's Decision and Order – Denying Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge